IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

OP.No. 5434 of 2002(V)

PETITIONER:

DIVAKARAN SANAL KUMAR,
CHAKKALATHEKKETHIL HOUSE, KOLLAKAMURI,
VADAKKUMTHALA VILLAGE,
REPRESENTED BY HIS FATHER
AND POWER OF ATTORNEY, C.K.DIVAKARAN,
S/O.KOCHUKUNJU, AGED 69, -DO- -DO-.

BY ADV. SRI.ABRAHAM VAKKANAL

RESPONDENTS:
---

1. USHA SASIDHARAN,W/O.SASIDHARAN ACHARI,
CHAITHANNYAIL,
PADANAYARKULANGARA,VADAKKUM MURI,
KARUNAGAPPALLY VILLAGE.

2. SASIDHARAN ACHARI KRISHNA DAS (MINOR),
-DO-.

3. KARTHIYAYANI, MULAVELLAYIL VEEDU,
KOLATHU MURI, PANAMANA VILLAGE.

4. KUMARAN, PUTHEN VEEDU, KOLLAKA MURI,
VADAKKUMTHALA VILLAGE.

BY ADV. SRI.B.SURESH KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.9543/02 IN O.P.NO.5434/02

DISMISSED.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
05.01.2007. JUDGE

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF THE SPECIAL POWER OF ATTORNEY DATED 11TH JANUARY, 2002 EXECUTED BY THE PETITIONER.

EXT.P2: TRUE COPY OF THE COMMON ORDER DATED 21.12.01 IN I.A.3194/01 & I.A.3195/01 IN RCP 11/00 OF THE RENT CONTROL COURT, KARUNAGAPPALLY.

RESPONDENTS' EXHIBITS:

EXT.R1(A): TRUE COPY OF THE ORDER DATED 21.12.2001 PASSED BY THE RENT CONTROL COURT, KARUNAGAPPALLY.

//TRUE COPY//

SK/- P.S. To Judge.

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

O.P.No.5434 of 2002 V

Dated this the 5th day of January, 2007.

JUDGMENT

Udayabhanu, J.

The tenant, who is sought to be evicted from the premises by the respondents on the grounds of arrears of rent and subletting, is the writ petitioner. Ext.P2 common order, which is under challenge in this original petition, was passed in I.A.Nos.3194/01 and 3195/01 in R.C.P.No.11/2000 in the file of the Rent control Court, Karunagappally. I.A.No.3194/01 was filed by the petitioner to condone the delay in filing the petition to set aside the ex parte order and I.A.No.3195/01 was filed to set aside the ex parte order passed on 8.8.2001.

2. It is seen that the court below directed the petitioner to deposit the arrears of rent, as per order dated 5.7.2001 and granted time till 5.8.2001 to make the deposit. The payment was not made and the matter was further adjourned to 8.8.2001. On 8.8.2001 also, no payment was made and hence the petitioner/tenant was set ex parte. The matter was further adjourned to 14.8.2001, 20.9.2001 and again to 20.10.2001, when the petitioner filed the above interlocutory applications to condone the delay and to set aside the ex parte order. The applications were disposed of on 21.12.2001 dismissing them. On the same day, the court passed the order under Section 12(3) of the Kerala Buildings (Lease and Rent Control) Act [Act 2 of 1965] {hereinafter referred to as

'the Act'} directing the tenant to put the landlord in possession of the building.

3. It is the case of the petitioner/tenant that he was not afforded sufficient opportunity before passing the order under Section 12(3) of the Act.

4. It is seen from Ext.P2 common order that in support of the interlocutory applications filed, no evidence was adduced or any affidavit in support thereof was filed by the petitioner. Instead, it was the counsel who filed the affidavit. Evidently, the counsel has no locus standi in the matter.

5. The contention of the counsel for the petitioner is that he was not afforded an opportunity under Section 12(3) of the Act. According to him, he should have been given

sufficient opportunity to show cause before passing the order under Section 12(3).

6. We find that the period stipulated as per order dated 5.7.2001 under Section 12(1) and the period prescribed in Section 12(2) expired on 5.8.2001. It is much subsequent to that date, the petitioner had applied for condonation of the delay and for setting aside the ex parte order mentioning the reasons for the same. We find that Ext.P2 order disposing of the interlocutory applications filed by him is in sufficient compliance of Section 12(3) as it is for the tenant to show sufficient cause and not for the court to call upon him to show cause.

7. It is submitted by the counsel for the respondent that the order impugned herein is appealable and hence the original petition will

not lie. We find that the above contention is absolutely correct as there is an alternative remedy available to the petitioner. Hence, the petitioner is not entitled to resort to the constitutional remedies.

Original petition is accordingly dismissed.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

sk/

//true copy//

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

O.P.No.5434 of 2002 V

JUDGMENT

5th January, 2007.